IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1089 OF 2004

Kantilal Mishrilal Kankariya & others. ... Appellants.
Versus.
Prem Hasmatrao Lalwani & others. ... Respondents.

Shri V.Z.Kankaria for the Appellants.

CORAM : ABHAY S. OKA, J.

DATED : 15th March, 2005.

P.C.:

1. Heard Shri Kankaria for the Appellants. By the impugned Judgment and Order dated 6th September 2004 the learned trial Judge has rejected the Application for temporary injunction made by the Appellants/Plaintiffs at Exh.5.

2. The learned trial Judge has recorded a prima facie finding that by virtue of the power of attorney dated 5th September 1984 the Respondent No.1/Defendant No.1 was authorised to execute a Sale Deed in respect of the property in dispute and accordingly a Sale Deed has been executed on the basis of the Power of Attorney.

3. The order refusing to grant temporary injunction is a discretionary order. The exercise of discretion by the trial Court cannot be faulted with as he has considered all the documents on record and has recorded a prima facie finding. No interference is called for in

this Appeal against the discretionary order passed by the learned trial Judge.

4. The order impugned has been passed in a substantive suit for declaration filed by the Appellants. It is, therefore, obvious that all actions of the Respondents pending the suit are naturally subject to final outcome of the suit.

5. At this stage Shri Kankaria, the learned Counsel for the Appellants submitted that part of the suit property is likely to be acquired for the public purpose and therefore, compensation which may be received by the Respondents be ordered to be deposited in the trial Court. However, no such prayer has been incorporated in the Application at Exh.5. It is for the Appellants to seek appropriate relief in this behalf. The Appellants are at liberty to make appropriate application in this behalf before the trial Court which will be considered by the trial Court on its own merits.

6. Subject to the observations made above, the Appeal from Order is dismissed with no order as to costs.

Judge.